



May 2, 2002

Ms. Kelli H. Karczewski
Schwartz & Eichelbaum
P.O. Box 3685
San Angelo, Texas 76902

OR2002-2289

Dear Ms. Karczewski:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162191.

The San Angelo Independent School District (the "district"), which you represent, received a request for personnel information concerning two district employees. You state that the district has released most of the requested information to the requestor. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted documents include information that is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a), (18) (emphasis added). The information at Tab 7 consists of two settlement agreements, one executed between the district and a district employee, the other executed between the district and the Equal Employment Opportunity Commission. Therefore, as prescribed by section 552.022, such information must be released unless it is confidential under other law.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the common-law right of privacy. For information to be protected by common-law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public’s interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that “the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released.” *Id.*

Upon review, we find the Equal Employment Opportunity Commission charge of discrimination documents located at Tab 6 and the settlement agreements located at Tab 7 are not files of an investigation of allegations of sexual harassment. Therefore, we determine that these documents may not be withheld under common-law privacy. Furthermore, a governmental body cannot make an enforceable promise to keep information confidential in a contract or settlement agreement unless the governmental body has express statutory authority to make such a promise. See Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 514 (1988), 114 (1975). Thus, the documents at Tab 6 and Tab 7 may not be withheld pursuant to any confidentiality agreement made by the district.

We determine that most of the remaining submitted information, however, does consist of files of an investigation of allegations of sexual harassment. In accordance with *Ellen*, the district must withhold the remaining portion of the submitted information except for the following, located at Tab 2: the June 8, 2001 letter from the superintendent, and the alleged harasser’s statement. The superintendent’s letter of June 8, 2001 provides an adequate summary of the investigation into the alleged sexual harassment. Since these documents would serve to identify the victim and individual witnesses of the alleged sexual harassment, and since these identities are protected by the common-law privacy doctrine as applied in *Ellen* and *Industrial Foundation*, the district must withhold the names of these individuals. We find, however, that the statements and identity of the alleged harasser are of legitimate concern to the public and thus are not protected by common-law privacy. See Open Records

Decision Nos. 438 (1986) (stating that common-law privacy does not protect information about public employee's alleged misconduct on job or complaints made about employee's job performance), 230 (1979), 219 (1978). Therefore, the district must redact the identities of the victim and witnesses and release these two documents to the requestor.¹

In summary, the district must release the documents located at Tab 6 and Tab 7. The remainder of the submitted information, with the exception of the June 8, 2001 letter from the superintendent and the alleged harasser's statement, at Tab 2, is protected by common-law privacy and must be withheld under section 552.101. The district must withhold the identities of the victim and witnesses from the letter and statement. The remainder of the superintendent's letter and the alleged harasser's statement must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹ As we address all of the submitted information under section 552.101, this ruling does not reach your claim under section 552.131.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 162191

Enc: Submitted documents

c: Ms. Gretchen M. Wintermantel
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